

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Updating Part 1 Competitive Bidding Rules	)	WT Docket No. 14-170
	)	
Expanding the Economic and Innovation	)	GN Docket No. 12-268
Opportunities of Spectrum Through Incentive	)	
Auctions	)	
	)	
Petition of DIRECTV Group, Inc. and	)	RM-11395
EchoStar LLC for Expedited Rulemaking to	)	
Amend Section 1.2105(a)(2)(xi) and 1.2106(a)	)	
of the Commission's Rules and/or for Interim	)	
Conditional Waiver	)	
	)	
Implementation of the Commercial Spectrum	)	WT Docket No. 05-211
Enhancement Act and Modernization of the	)	
Commission's Competitive Bidding Rules and	)	
Procedures	)	

**PETITION FOR RECONSIDERATION OF THE  
RURAL-26 DE COALITION**

The Rural-26 DE Coalition (the "Rural-26"), by its counsel, and pursuant to Section 1.429 of the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission"), hereby petitions the Commission to reconsider a portion of the *Report and Order*<sup>1</sup> ("DE Report and Order") in the above captioned proceeding dealing with authorized bidders. Specifically, Rural-26 requests that the FCC reconsider newly amended rule 1.2105(a)(2)(iii), which prohibits any individual from serving as an authorized bidder for more than one applicant. Rural-26 requests that the Commission amend this rule so that an individual attorney may serve as an authorized bidder for more than one applicant where those applicants share no common ownership and are not qualified to bid for licenses in the same or overlapping

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<sup>1</sup> Report and Order; Order on Reconsideration of the First Report and Order; Third Order on Reconsideration of the Second Report and Order; Third Report and Order, *Updating Part 1 Competitive Bidding Rules, et. al.*, WT Docket No. 14-170, *et. al.*, FCC 15-80 (rel. July 21, 2015) ("DE Report and Order").

geographic areas. Adoption of such a rule will continue to protect against collusion and anti-competitive behavior while also ensuring that rural service providers and small businesses will be able to continue to rely upon the long-established relationships they have with regulatory counsel upon whom they rely to serve as authorized bidders.

**I. THE COMMISSION SHOULD RECONSIDER AND AMEND THE PROHIBITION ON AN INDIVIDUAL ATTORNEY SERVING AS AN AUTHORIZED BIDDER FOR MORE THAN ONE APPLICANT.**

In the *DE Report and Order*, the FCC acknowledged that Congress has mandated that the FCC design auctions to, among other things, disseminate licenses “among a wide variety of applicants,” including rural telephone companies, and to promote the deployment of new technologies, products, and services to “those residing in rural areas.”<sup>2</sup> The FCC also noted that Section 309(j)(4) also directs the Commission to “ensure” that various entities – specifically including rural telephone companies – “are given the opportunity to participate in the provision of spectrum-based services.”<sup>3</sup> The FCC also recognized that industry-wide changes, and the once-in-a-generation opportunity for small and rural providers to gain access to below-1-GHz spectrum, necessitated the need for changes to the competitive bidding rules to better enable rural providers to compete for licenses at auction.<sup>4</sup>

The FCC therefore took numerous actions to facilitate rural provider participation in spectrum auctions and competition in rural areas, including adopting a new rural service provider bidding credit and adopting reasonable caps on bidding credits. Rural-26 applauds the FCC for these actions and the FCC’s efforts to ensure rural and small provider participation in the Incentive Auction. The FCC’s amendment to rule 1.2105(a)(2)(iii), however, has the unintended consequence of significantly deterring rural and small company participation.

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<sup>2</sup> See *DE Report and Order* at ¶ 86, citing 47 U.S.C. § 309(j)(3)(a)-(b).

<sup>3</sup> See *id.* ¶ 86, citing 47 U.S.C. § 309(j)(4).

<sup>4</sup> See *id.* at ¶¶ 87-95.

In past auctions, rural service providers and small companies, including Rural-26 members, have relied on their established regulatory counsel to guide them through the auction process and to serve as their bidding representatives, either as the primary authorized bidder or as a “back-up” secondary authorized bidder. There has been no suggestion of abuses or anticompetitive behavior stemming from this representation. Rural service providers often are very small companies with limited staff already stretched too thin. These companies simply do not have the manpower, resources or expertise to devote to full-time auction participation over a lengthy and unpredictable time period. Instead, they rely on their regulatory counsel to do the heavy lifting when it comes to monitoring an auction and placing bids round-to-round pursuant to the applicant’s instructions.

Amended rule 1.2105(a)(2)(iii) now has the effect of prohibiting the members of the Rural-26 and other rural and small companies from utilizing the counsel of their choice to serve as authorized bidder(s) during the Incentive Auction. These companies will now have to navigate the most complex spectrum auction to date without utilizing their long-standing bidding agents. This is particularly problematic since the auction rules no longer provide for any activity waivers, and a failure to bid in a single round, even due to an emergency situation, may result in loss of eligibility to continue participating in the auction. The lack of staff, resources, and regulatory experience on the part of rural service providers and small businesses likely will result in many of these companies refraining from participating in the Incentive Auction entirely.

Such a lack of rural and small company participation is inconsistent with the Congressional mandate of Section 309(j), and the FCC’s efforts to ensure rural and small company participation. It would be in the public interest for the Commission to amend Rule 1.2105(a)(2)(iii) and permit an individual attorney to serve as an authorized bidder for more than one applicant where the applicants have no common ownership and are not eligible to bid for any

licenses in the same or overlapping geographic areas. Amending the rule in this fashion will not raise any anticompetitive concerns.


The amended rule is overbroad because it denies applicants the right to select the counsel of their choosing in situations in which there is no potential for anticompetitive or collusive behavior. The rule also is a substantial departure from past practice that is not sufficiently supported in the record. There is no suggestion in the record that allowing an attorney to bid for unrelated and non-competing applicants will pose any anti-competitive threat.

## **II. CONCLUSION**

For the foregoing reasons, the Commission should reconsider and amend rule 1.2105(a)(2)(iii). Specifically, the Commission should allow an individual attorney to serve as an authorized bidder for more than one applicant where such applicants have no common ownership and are not qualified to bid for licenses in the same or overlapping geographic areas. Amending the rule in this manner will facilitate rural and small company participation by allowing such companies to continue to rely on the long-established relationships they have with their regulatory counsel to act as bidding agents, while also continuing to protect against collusion and anti-competitive behavior among auction participants.

Respectfully submitted,

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